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10 Attorney for Plaintiff,

11 THE STANDARD FABRICS INTERNATIONAL, INC.

12 UNITED STATES DISTRICT COURT

13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 THE STANDARD FABRICS
15 INTERNATIONAL, INC., a California
16 corporation,

17 Plaintiff,

18 v.

19 THE DRESS BARN, INC., a Connecticut
20 corporation; B & Y FASHION, INC., a
21 California corporation; and DOES 1
22 through 10, inclusive,

23 Defendants.

Case No.:

COMPLAINT FOR:

1. Copyright infringement;
2. Vicarious and/or Contributory Copyright Infringement

JURY TRIAL DEMANDED

1 Plaintiff, THE STANDARD FABRICS INTERNATIONAL, INC., by and
2 through its undersigned counsel, complaining of the defendants THE DRESS
3 BARN, INC., a Connecticut corporation, B & Y FASHION, INC., a California
4 corporation, and DOES 1 through 10, inclusive (collectively, "Defendants"),
5 respectfully alleges as follows:

6 **NATURE OF THE ACTION**

7 1. Plaintiff creates and obtains rights to unique two-dimensional non-
8 functional artworks for gallery display and use on textiles, which are transacted
9 primarily in and through the apparel industry. Plaintiff owns these designs in
10 exclusivity and exploits these designs for profit by selling products bearing the
11 designs or entering into licensing agreements for sale or display by third parties.
12 Defendants have knowingly and intentionally used one such design in the
13 production of unauthorized goods which infringe Plaintiff's copyrights.

14 **JURISDICTION AND VENUE**

15 2. The Court has original subject matter jurisdiction over Plaintiff's
16 federal claims arising under the Copyright Act of 1976, Title 17 U.S.C., § 101 et
17 seq. under 28 U.S.C. § 1331, 1338 (a) and (b).

18 3. This Court has personal jurisdiction over the Defendants because the
19 events or omissions giving rise to the claim occurred, the tortious acts occurred,
20 and a substantial part of the injury took place and continues to take place, in this
21 judicial district and/or each of the defendants can be found in this judicial district.

22 4. Venue is proper in the United States District Court for the Central
23 District of California pursuant to 28 U.S.C §§ 1391(b), 1391(c), and 1400(a) on
24 information and belief that: (a) this is a judicial district in which a substantial part
25 of the events giving rise to the claims occurred, the tortious acts occurred, and a
26 substantial part of the injury took place and continues to take place; and (b) this is
27 a judicial district in which Defendants may be found.
28

THE PARTIES

5. Plaintiff THE STANDARD FABRICS INTERNATIONAL, INC. (“Plaintiff”) is a California corporation with its principal place of business in the County of Los Angeles, State of California.

6. Upon information and belief, defendant THE DRESS BARN, INC. (“Dress Barn”), is, and at all times relevant was, a Connecticut corporation and is doing business within the jurisdiction of this Court.

7. Upon information and belief, defendant B & Y FASHION, INC. (“B & Y”), is, and at all times relevant was, a California corporation and is doing business within the jurisdiction of this Court.

8. Defendants DOES 1 through 10 are individuals and/or entities whose true names and capacities are presently unknown to Plaintiff. At such time as said defendants' true names and capacities become known to Plaintiff, Plaintiff will seek leave to amend this Complaint to insert said true names and capacities of such individuals and/or entities.

9. Upon information and belief, at all times relevant herein, Defendants, including Does 1 through 10, inclusive, and each of them, were and still are the partners, agents, employers, and/or employees of the other named Defendants, and each of them; that in so doing the things alleged, said Defendants were acting within the course and scope of said partnership, agency, or employment; and that in so doing the things alleged, said Defendants were acting at all times with the knowledge, consent, and authorization of each of the other Defendants.

10. Upon information and belief, at all times relevant herein, Defendants, including Does 1 through 10, inclusive, and each of them, are the alter egos of each other; are characterized by a unity of interest in ownership and control among themselves such that any individuality and separateness between them have ceased; are a mere shell instrumentality and conduit through which Defendants carried on their business by use of each others' names; completely controlled,

1 dominated, managed, and operated each others' business to such an extent that any
2 individuality or separateness of the Defendants does not and did not exist;
3 completely failed to observe any corporate formalities; and intermingled the assets
4 of each other, and other entities affiliated with them, to suit the convenience of
5 themselves and in order to evade payment of obligations and legal liability to
6 various customers and creditors.

7 **PLAINTIFF'S COPYRIGHT**

8 11. Plaintiff owns, and had owned prior to the infringing acts complained
9 of herein, United States Copyright Registration No. VA 1-853-810, entitled
10 "Spring Summer 2013, Collection V," which included a two-dimensional textile
11 design it has internally designated as design 7087 ethnic mask half drop
12 ("Design").

13 **DEFENDANTS' INFRINGING CONDUCT**

14 12. Plaintiff is a fabric print designer who regularly sells, licenses, or
15 otherwise exploits its designs artwork to third parties.

16 13. In or around June of 2015, Plaintiff discovered that Defendants were
17 selling garments that bear designs that are identical or substantially similar to
18 Plaintiff's Design ("Infringing Garments").

19 14. Upon information and belief, Defendants have misappropriated the
20 Design, and are selling Infringing Garments online and in and to retail stores
21 throughout the United States, including but not limited to within this judicial
22 district.

23 15. Upon information and belief, Defendants are, without Plaintiff's
24 authorization, unlawfully reproducing, importing, distributing and/or selling
25 Infringing Garments in this judicial district that feature a design that is identical, or
26 substantially similar to, the Design.

27 16. Upon information and belief, Defendants' infringing use of the Design
28 is not limited to the Infringing Garments described above, and other garments

1 Defendants created, manufactured, caused to be manufactured, imported,
2 distributed, and/or sold may infringe Plaintiff's copyright in the Design.

3 17. On or about June 26, 2015, Plaintiff, through its counsel, addressed a
4 letter to Defendant Dress Barn, informing it of the Infringing Garments. Plaintiff
5 demanded, among other things, that Defendant Dress Barn immediately cease and
6 desist from using, copying, reproducing, distributing, displaying, ordering,
7 purchasing, manufacturing, offering for sale or advertising the Design in any way.
8 Plaintiff also demanded that Defendant Dress Barn provide Plaintiff's counsel with
9 a written accounting of each and every use of the Design by Defendant Dress Barn,
10 or any person or entity working with or for Defendant Dress Barn and to provide
11 Plaintiff's counsel with the names, addresses, and contact information for the
12 manufacturers, stores, websites, and companies used by Defendant Dress Barn in
13 relation with the Design. Plaintiff further demanded that Defendant Dress Barn
14 provide Plaintiff's counsel with copies of all sales receipts, invoices, customer
15 records, accounting records, and inventories of and relating to the Design.

16 18. An attorney purporting to represent both Defendant Dress Barn and
17 Defendant B & Y contacted Plaintiff's counsel in or around August 2015.

18 19. Upon information and belief, Defendant B & Y is the garment
19 manufacturer who provided the Infringing Garments to Defendant Dress Barn.
20 The labels on the Infringing Garments identify them as "Madison Paige."
21 Defendant B & Y is listed on the United States Patent and Trademark Office
22 ("USPTO") as the owner of a registered trademark for Madison Paige in
23 international class 25 for "Women's clothing, namely, shirts, dresses and blouses"
24 and bearing USPTO Registration No. 4220233. The Infringing Garments also
25 contained a label bearing RN Number 133430, which a search of the Federal Trade
26 Commission ("FTC") website reveals as being registered to Defendant B & Y.

27 20. After nearly three (3) months of delays, Plaintiff finally received a
28 response to its requests from Defendants' counsel in late October 2015. However,

1 Plaintiff deemed this response to be insufficient and unsubstantiated. Upon
2 information and belief, the delays to provide the requested information over a
3 nearly three (3) month period has been an intentional attempt to delay the filing of
4 this lawsuit, such that Plaintiff believes it has no further recourse other than to file
5 this lawsuit to seek redress from the court and, through the discovery process, the
6 information and documents that are uniquely in Defendants' possession, custody,
7 and control.

8 21. Upon information and belief, Defendants continue to misappropriate
9 the Design and to unlawfully reproduce, import, distribute, and/or sell Infringing
10 Garments, in this judicial district, featuring a design, which is identical, or
11 substantially similar to the Design.

12 **FIRST CLAIM FOR RELIEF**

13 **(For Copyright Infringement - Against All Defendants)**

14 22. Plaintiff repeats, reiterates and realleges each and every allegation
15 contained in paragraphs designated 1 through 21, inclusive, of this Complaint, as if
16 fully set forth herein at length.

17 23. Plaintiff is informed and believes and thereon alleges that Defendants,
18 and each of them, infringed Plaintiff's copyright by creating, making and/or
19 developing directly infringing and/or derivative works from the Design and by
20 producing, distributing and/or selling Infringing Garments.

21 24. Due to Defendants' acts of infringement, Plaintiff has suffered
22 substantial damages to his business in an amount to be established at trial.

23 25. Due to Defendants' acts of infringement, Plaintiff has suffered general
24 and special damages in an amount to be established at trial.

25 26. Due to Defendants' acts of copyright infringement as alleged herein,
26 Defendants, and each of them, have obtained direct and indirect profits they would
27 not otherwise have realized but for their infringement of the Design. As such,
28 Plaintiff is entitled to disgorgement of Defendants' profits directly and indirectly

1 attributable to Defendants' infringement of the Design in an amount to be
2 established at trial.

3 27. Plaintiff is informed and believes and thereon alleges that Defendants,
4 and each of them, have imported, manufactured, cause to be manufactured and/or
5 sold Infringing Garments.

6 28. Upon information and belief, Defendants also began such activities
7 although they were fully aware of Plaintiff's prior rights in the Design. Therefore,
8 Defendants' acts of copyright infringement as alleged above were, and continue to
9 be, willful, intentional and malicious, subjecting Defendants, and each of them, to
10 liability for statutory damages under Section 504(c)(2) of the Copyright Act in the
11 sum of up to one hundred fifty thousand dollars (\$150,000) per infringement.
12 Further, Defendants', and each of their willful and intentional misappropriation
13 and/or infringement of Plaintiff's copyrighted Design renders Defendants, and each
14 of them, liable for statutory damages as described herein. Within the time
15 permitted by law, Plaintiff will make its election between actual damages and
16 statutory damages. Plaintiff is also entitled to preliminary and permanent injunctive
17 relief.

18 **SECOND CLAIM FOR RELIEF**

19 **(For Vicarious and/or Contributory Copyright Infringement**

20 **- Against All Defendants)**

21 29. Plaintiff repeats, realleges and incorporates herein by reference as
22 though fully set forth the allegations contained in Paragraphs 1 through 21,
23 inclusive.

24 30. Plaintiff is informed and believes and thereon alleges that Defendants
25 knowingly induced, participated in, aided and abetted in and profited from the
26 illegal reproduction and/or subsequent sales of Infringing Garments featuring the
27 Design as alleged hereinabove.

28 ///

1 31. Plaintiff is informed and believes and thereon alleges that Defendants,
2 and each of them, are vicariously liable for the infringements alleged herein
3 because they had the right and ability to supervise the infringing conduct and
4 because they had a direct financial interest in the infringing conduct.

5 32. By reason of the Defendants', and each of their, acts of contributory
6 infringement as alleged above, Plaintiff has suffered and will continue to suffer
7 substantial damages to his business in an amount to be established at trial, as well
8 as additional general and special damages in an amount to be established at trial.

9 33. Due to Defendants' acts of copyright infringement as alleged herein,
10 Defendants, and each of them, have obtained direct and indirect profits they would
11 not otherwise have realized but for their infringement of the Designs. As such,
12 Plaintiff is entitled to disgorgement of Defendants' profits directly and indirectly
13 attributable to Defendants' infringement of the Design, in an amount to be
14 established at trial.

15 34. Plaintiff is informed and believes and thereon alleges that Defendants,
16 and each of them, have imported, manufactured, cause to be manufactured and/or
17 sold Infringing Garments.

18 35. Upon information and belief, Defendants also began such activities
19 although they were fully aware of Plaintiff's prior rights in the Design. Therefore,
20 Defendants' acts of copyright infringement as alleged above were, and continue to
21 be, willful, intentional and malicious, subjecting Defendants, and each of them, to
22 liability for statutory damages under Section 504(c)(2) of the Copyright Act in the
23 sum of up to one hundred fifty thousand dollars (\$150,000) per infringement.
24 Further, Defendants', and each of their, willful and intentional misappropriation
25 and/or infringement of Plaintiff's copyrighted Design renders Defendants, and each
26 of them, liable for statutory damages as described herein. Within the time
27 permitted by law, Plaintiff will make its election between actual damages and
28

1 statutory damages. Plaintiff is also entitled to preliminary and permanent injunctive
2 relief.

3 **PRAYER FOR RELIEF**

4 **WHEREFORE**, Plaintiff respectfully demands the following relief against
5 Defendants, jointly and severally:

6 Against All Defendants, With Respect to Each Claim for Relief:

7 a. That Defendants, their agents and servants be enjoined from selling
8 Infringing Garments, or otherwise infringing Plaintiff's copyright in the Design;

9 b. That Plaintiff be awarded all profits of Defendants plus all losses of
10 Plaintiff, the exact sum to be proven at the time of trial, or, if elected before final
11 judgment, statutory damages as available under the Copyright Act, 17 U.S.C. § 101
12 et seq.;

13 c. That Plaintiff be awarded his attorneys' fees and costs as available
14 under the Copyright Act 17 U.S.C. § 101 et seq.;

15 d. Directing such other relief as the Court may deem appropriate to
16 prevent the Defendants from participating in this or other copyright infringements;
17 and

18 e. Such other relief as the Court may deem appropriate.

19
20 Dated: October 28, 2015

NOVIAN & NOVIAN, LLP
Attorneys at Law

21
22 By: /s/ Farhad Novian
23 FARHAD NOVIAN
24 JOSEPH A. LOPEZ
25 Attorneys for Plaintiff
26 THE STANDARD FABRICS
27 INTERNATIONAL, INC.
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